

Appl. No. : 10/624,878
Filed : July 21, 2003

REMARKS

The Office Action mailed December 23, 2004 has been received and reviewed. Claims 1-18 are currently pending in the application. Claims 1-5, 8-14 and 17 stand rejected. Claims 6, 7, 15, 16 and 18 have been objected to as being dependent upon rejected base claims, but the indication of allowable subject matter in such claims is noted with appreciation. Applicant has amended Claim 1, canceled Claims 9-18 without prejudice or disclaimer, and added Claims 19-31. Accordingly, Claims 1-8 and 19-31 remain pending for consideration. Applicant respectfully requests reconsideration of the application as amended herein and in view of the arguments below.

35 U.S.C. § 102(e) Anticipation Rejections

Claims 1, 3, and 8-10 stand rejected under 35 U.S.C. § 102(e) as being anticipated U.S. Patent No. 6,616,893 to Pham. Applicant respectfully traverses this rejection, as hereinafter set forth.

A claim is only anticipated if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Figure 1 of Pham illustrates an inner reservoir cup 12 that, when assembled, is inserted in a container vessel 14. Col. 4, lines 56-67. Thus, the inner reservoir cup 12 and the container vessel 14 form a separation cavity 30 where one or more test strips are positioned. Col. 5, lines 15-21, and lines 40-42. However, as soon as liquid is placed into the inner reservoir cup 12, it is allowed to flow through at least one aperture 39, 40 into the separation cavity 30. Col. 5, lines 26-29.

According to the Examiner, Pham teaches using plugging tape configured to selectively fluidly seal the flow aperture in the cup. However, Applicant respectfully disagrees. Pham uses tape to cover one or more of a plurality of apertures when a test strip is not desired in a particular position. Col. 3, lines 44-46. However, when Pham's device 10 is assembled and in use, it does not have "a plug configured to selectively

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fluidly seal the flow aperture in the inner liner, wherein the plug is capable of selectively sealing and unsealing the flow aperture while the seal cap is positioned so as to seal the inner liner open top" as required, *inter alia*, in independent Claim 1, as amended and presented herein. Rather, once Pham's cap 15 is attached to the container vessel 14 to seal the device 10 (see col. 5, lines 30-34), the apertures 39, 40 cannot be plugged or unplugged.

Therefore, Applicant respectfully requests that the rejection of independent Claim 1 be withdrawn. In addition, Claims 3 and 8 are also allowable, among other reasons, as depending from Claim 1, which is allowable. Claims 9 and 10 have been canceled herein without prejudice or disclaimer, mooting the rejection of these claims.

35 U.S.C. § 103(a) Obviousness Rejections

Claims 2, 4, 5, 11-14 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,616,893 to Pham in view of U.S. Patent No. 6,361,744 to Levy or U.S. Patent No. 6,786,106 to Alley.

Applicant respectfully submits that Claims 2, 4 and 5 are patentable, among other reasons, as depending from Claim 1, which is patentable at least for the reasons discussed above. Therefore, Applicant respectfully requests that Claims 2, 4 and 5 be allowed. Claims 11-14 and 17 have been cancelled herein without prejudice or disclaimer, mooting the rejection of these claims.

Allowable Subject Matter

The Applicant thanks the Examiner for the indication of allowable subject matter in Claims 6, 7, 15, 16 and 18. Pursuant to the Office Action, the Applicant has rewritten Claims 6, 7 and 15 in independent form as new Claims 21, 22 and 29, respectively, that include all of the limitations of the corresponding base claims and any intervening claims. Also, Applicant submits that new Claim 23 includes subject matter that the Examiner has indicated to be allowable. Accordingly, Applicant respectfully submits that new Claims 21-31 are now in condition for allowance.

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Request for Telephone Interview

In view of the foregoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Applicant's undersigned attorney of record hereby formally requests a telephone interview with the Examiner. The Applicant's attorney can be reached at (949) 721-2942 or at the number listed below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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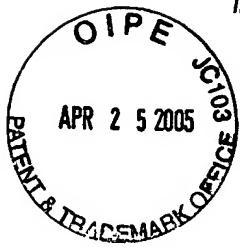
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